IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

O. S. A. No.18 of 1998
Date of decision: 14.12.2006

Bal Mukand Seth	…. Appellant
Versus	
Himachal Pradesh Financial Corporation & Another	…. Respondents

Coram:

The Hon'ble Mr.Justice Deepak Gupta, J.

The Hon'ble Mr Justice Surinder Singh, J.

Whether approved for reporting ?[1]

For the appellant	**Mr Pankaj Sharma, Advocate, vice Ms. Ruma Kaushik, Advocate**
For respondent No.1	**Mr B K Sood, Advocate, vice Mr Ajay Kumar, Advocate.**

Deepak Gupta,J (Oral)

This appeal is directed against the judgment of the learned Single Judge of this Court dated 25th June,1998, whereby he has dismissed the application for condoning the delay for setting aside the exparte decree.

The facts relevant for the disposal of the case are that Civil Suit No.10 of 1989 was filed by the plaintiff/respondent, the Himachal Pradesh Financial Corporation (hereinafter to be called as

[1] ***Whether the reporters of Local Papers may be allowed to see the judgment ?***

"the HPFC") against M/S United Chemical Industries, a Proprietorship concern owned by defendant No.2 Bal Mukand Seth. In the said suit, the defendants were not served personally and finally they were served through publication of proclamation of service, under Order 5 Rule 20 of the Code of Civil Procedure, in the Indian Express. Since, none appeared for the defendants in the suit, they were proceeded against exparte and an exparte decree for a sum of Rs.3,14,729-31 paise was passed in favour of the plaintiff/respondent and against the defendants/appellant along with future interest at the rate of 13½% per annum from the date of the institution of the suit till the date of its realization with proportionate costs of the suit.

Thereafter, the plaintiff/decree holder filed an execution petition. Notices were sent to the respondents/JDs but they were not served at the addresses given in the suit. Finally, a new address of the appellant-JD Bal Mukand Seth was given in the year 1997 and on this address notices were sent firstly on 30th June, 1997. We have perused the file of the Execution Petition and find that as per report of the Process Server dated 27.6.1997 the appellant-JD was not found in the house and a copy

of the notice was affixed on the house i.e. 56 Hari Vihar, Vijay Park, Dehra Dun. Despite this endorsement fresh notices were issued for 22nd August, 1997. Thereafter two separate notices were issued to both the JDs. By means of one notice in the execution petition No.18 of 1995, the JDs (appellants herein) were informed that Mr Ajay Kumar, Advocate, for the decree holder has filed an application for execution of the decree passed in Civil Suit No.10 of 1989 decided on 20th August, 1990 for the realization of Rs.5,13,170-06 paise. By means of this notice, the JD was required to appear in the court on 22nd August,1997. The second notice was in OMP No.153 of 1995 in Execution Petition No.18 of 1995 in Civil Suit No.10 of 1989 in which notice was given to the JDs to file an affidavit disclosing their assets. Admitted case of the parties is that these notices were personally served on Bal Mukand Seth on 9th July, 1997.

It is also the admitted case of the parties that despite such notices having been served upon the appellant, no effort was made to get the exparte decree set aside within the period of 30 days thereafter. It is apparent from the reading of the notices sent to the appellants/JDs

that they were made aware by the notice itself that a decree had been passed against them in Civil Suit No.10 of 1989. Once the appellants/JDs received the notice, it was their duty to have immediately come to Shimla and found out the details of the decree passed against them. Instead of doing so the appellants/JDs waited till 22nd August, 1997, when appellant Bal Mukand Seth allegedly came to Shimla to instruct his Counsel. On 22nd August, 1997 Sh.Sandeep Kaushik, Advocate, has put in appearance for the JDs before the Registrar (Vigilance) of this Court. Even on this date no effort was made to file an application for setting aside the exparte decree. On 3rd September, 1997 an application for inspection of the records of Civil Suit No.10 of 1989 was filed and the records were inspected on the same date. Thereafter, an application under Order 9 Rule 13 of the Code of Civil Procedure, for setting aside the exparte decree, was prepared on 14th September, 1997. However, the same was not filed in the court till 29th September, 1997. At this stage also, no application for condoning the delay in moving the application for setting aside exparte decree was filed, even though, *prima-facie* the application for setting aside the exparte

decree was time barred. Application for condonation of delay, which is purported to have been also prepared on 14th September, 1997, was in fact filed on 3rd October, 1997.

The learned Single Judge has come to the conclusion that even if it be assumed for the sake of arguments that the appellant/JD was not aware of the passing of the decree till 9th July,1997 when he was served in the execution petition, no grounds have been made out for condoning the delay thereafter. We are in agreement with the findings of the learned Single Judge. The appellants made no efforts from 9th July till 29th September. The facts narrated above show that the appellants have been grossly negligent. No explanation worth the name has been given for condoning the delay. We find no error in the order of the learned Single Judge, whereby he has held that the appellant has been grossly negligent in moving the application and no case is made out for condonation of delay. The appeal is accordingly dismissed

CMP No.71 of 198.

In view of the order passed in the main appeal, this application does not survive and

stands dismissed. Interim order dated 26th October,1998 is vacated.

(Deepak Gupta),J

December 14, 2006 (Surinder Singh),J.
(D)